

16

App. F. IX-4

Previous References

1929-30
Law

File No. 165-29

Serial Nos.

123.5
1-11

Later References

legis 26-30.5
law 108-30 1-2

Preserve
m.
31/1/43

General and Revenue Secretariat.

Serial Nos.

712

Part B for 6/07/30

SUBJECT

Appeal against the order of acquittal
of one Syed Hyat Ali No. 179-27-28
in the 2nd class, 1st division, Shikhar

2.

Imp. 7327-8.5 21.6.30

Law and Order Dept. 9-11-30

5,

to the S.G.

G.A.

of the

Law and Order Dept. 466-75 5.9.30

For the instructions to read in the
proposals for referring appeals against
order of acquittal in criminal cases
etc.

Dr. G. K. S. 8/5/30

No. 10767
28-80. Immediate

(2) Retransmitted with compliments.

I have carefully gone through the Judgment. I have not had the advantage of perusing the depositions of witnesses examined in the case as copies thereof are not available in the file. I have, therefore, to form my opinion, merely on the Judgment.

(4) The only point for consideration is whether the accused can be held guilty of offences under sections 304 A, and 337 Indian Penal Code. The main ingredient is the doing of a rash or negligent act by the accused. The Magistrate has recorded findings to the effect that the speed of the car at the time of the occurrence was only 15 miles per hour and that the accused had applied the brakes to avoid the occurrence. As regards the steering rod connection, there is the evidence of P. W. 4 to show that the defective nature of this connection was known to the driver and that the driver had warned some of the passengers of danger on this account. The Magistrate also seems inclined to believe the truth of the statement about the previous warning by the accused. From this, it may fairly be inferred that the accused knew that the steering rod connection was not in good order and that without setting it right, he had taken the risk of driving the car. This conduct on his part constitutes negligence within the meaning of the above sections.

(5) As one life was lost and several persons injured, I think the case may be taken up in appeal before the High Court.

(6) Should Government decide upon filing an appeal, I would request that (in order to save time) the copy of the Judgment now in the file may kindly be sent to me along with the order according sanction. I shall get other copies later on from District Magistrate. The time for appeal expires on the 23rd instant.

Bangalore,
19th June 1930.)

M. Ramakrishna Rao
Government Advocate.

POSTS



TELEGRAPHS.

NOTICE

This form must accompany any inquiry made respecting this Telegram.

Charges to pay.

Rs.

As.



Received in at Office of Origin

Date

Hour

Minute

Subject/Instructions

Recd. here at

H.

M.

Bangalore Camp 28/6/30

Has the file been sent to the Govt Advocate? Sent a letter to him at once

request immediate orders on appeal against Shimoga first 1921 dated 13th instant regarding 1916. Magistrate's Case 179 of 1928-29 disson

(1) It is regrettable that the file has been taken so long to make this copy. It is noted at the moment when the work of the Govt Advocate is omitted to be sent even the certified copy of the file. (2) Send a copy of the circular to all the members of the committee in time. (3) The opinion of the members is not clear.

(9) I enquired at the G.A's office & also saw the copy of the opinion furnished by the Govt Advocate. The file however was sent to Mysore yesterday by the office. Since G.A is of opinion that the case is a fit one for appeal & the last day for filing the appeal is 23rd inst, draft G.O put up for orders.

(10) It is a fit case for appeal. Draft now may be made. 20/6/30. 3rd member. 12th app. The members have made much work. 21-6-30.

File No. 165

of 1929

Serial
No.

To

The Govt. Advocate

The District Magistrate

Sanctioning the appeal

Telegram sent to the District Magistrate

"Send immediately Certified Copy
Shimoga First Magistrate's Judgment
Case 179 of 1928-29 for preferring
appeal 23rd instant."

Law Sec

SD PH 24.6

C.

POSTS



TELEGRAPHS.

2235

NOTICE.

This form must accompany any inquiry made respecting this Telegram.

Charges to pay.

Rs.

As.

Office Stamp

Handed in at (Office of origin.)

Date.

Hour.

Minute.

Service Instructions.

Order

TO

Recd. here at

H.

M.

Law Sec Bangalore.

certified copy Shimoga first magistrate
judgment case 179 of 1928-29 already
sent with number J. 579 dated
4th march 1930 vide also your
number J. 4957. police another

N. B.—The name of the Sender, if telegraphed, is written after the text.

Karim Bux Bros., Printers, Calcutta—1237 (B-206)—8-2-29—2,50,000 Bks.

6235
b

General and Revenue
Secretariat

App. F. III-2]

File No.

of 193

Serial
No.

Letter NO: J1-94 d 21.6.30 from Dtl
Confirming the telegram & forwarding
Copy of Indpt.

(13) Subd: The G.A. has also recd. a copy
of the Indpt & has filed the same in the Dy. Ch.
This may therefore be filed SD Mr. 24/6
yes P.H. 24/6

Draft Circular as instructed in para 11 supra

put up
one

Jan 5/6
24
30/6

27.6
24/6

7 air draft put up

one
17.

Secy)

24/7

Mr
18/7
24/7

Subd for perusal before issue

Secy)

15/7/30
24/7
18/7
24/7

To

District Mag^{rs} & Sd. Mag^{rs}

Circular no: P 466-75 dated 14 Aug 1930

WD 02328--GPB--10,000--22-4-30

Note -Contn. Sheet

B one
30/7

No
Encl. one file

SHIMOGA,

Dated 9 — 6 — 1930.

Camp Davanagore

From

N. SESHIA SASTRI, ESQ., B.A., B.L.,
Public Prosecutor,
SHIMOGA DIVISION.

To

The District Magistrate
Shimoga District

Sir,

With reference to your letter
dated 7.3.30
No. P. L. 721/28-30 asking me for my
opinion as to whether the judgment of
acquittal of one Syed Hayat in CC 179 of 28-29
in the file of the I class Magistrate Shimoga
is a fit case for appeal I have the
honor to state that a perusal of the
judgment shows that the accused
knew that the steering rod connection
was not working properly. The evidence
of PW₄ seems to make that point clear
as can be seen from the last para of the
judgment of the learned Magistrate. It was
therefore incumbent on the driver to see
that the connection was set in order

before attempting to drive further. Since, apparently, he has not done so I think he is guilty of a rash & act. The mere fact that the bus was driven from Harihar to almost up to Shimoga without accident does not make any difference. I am therefore of the opinion that this is a fit case for appeal and that it is advisable to consult the Government Advocate for doing the needful.

As the date of judgment is 23.12.29 the last day for filing the appeal is 23.6.30, six months being the period of limitation.

The file received with the letter under reference is herewith returned.

34606

Very respectfully

I have the honor to be,
Sir,

Your most obedient servant
M. S. Sastri

Public Prosecutor
Shimoga Division

Subd for order:-
ad 12/6.

J. P. S. Sastri
Law Secretary
G. R.

136

Recd on 12/6.
21

Submi Tbs

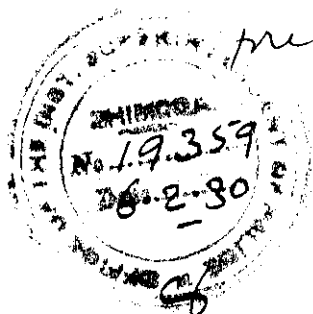
2

I beg to enclose herewith copy of the judgment in the case for kind perusal

The driver i.e. the accused knew that the steering rod of the bus was defective. Apart from the evidence of witnesses the nature of damages caused to the bus will clearly show that the bus was running in a rash and negligent manner. In all 9 persons are injured. The claimer has succumbed to the injuries.

Under these circumstances it is clear that the accused has committed the offence under Sec. 304A & 3872 P.C. I beg to submit that this is a fit case for preferring an appeal

S. K. Rangappa
Sub-Inspector
P.C. of Prosecution
Court
6.2.30 Shimoga



H.C. 63/28.29

Memo

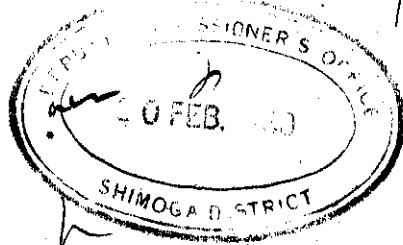
Submitted to the District Magistrate.

Under the circumstances, a reference may kindly be made to prefer an appeal in the case.

24645

19.2.1930

Deputy District Superintendent
Shimoga



C.C. 179
28.29

To

The Superintendent of Police
Shimoga District

Remarks on the diary of the Prosecuting Inspector
Special I St. Court Shimoga for the week ending 28¹²/₂₉

With reference to the above reporting that the
Case of Motor accident on the Shimoga Hombali
road ended in acquittal etc, has the honour to
observe that the reasons for acquittal do not
seem to apply appropriately and correctly to Motor
accidents wherein negligence is traceable to series
of omissions from start to finish of the journey
& the steering was not satisfactory the accused
should have looked to it before starting. He had
gone 4 miles and the defect in steering resulted
in this serious accident. With such reasoning, drivers
are safe with all defects.

The District Superintendent of Police is requested
to report at once the steps taken to prefer an appeal
in the case

At P.R. 1.26, 27-30 Memo

Copy to above is forwarded to Prosecuting Inspector
I class court Shimoga for immediate necessary
action. He will see the ^{undisputed} ~~to~~ with a ^{copy} ~~copy~~ of the order of acquit-
tal in the case

Amended by
P.R. 1.26/30
28/2

By order
D. Gangachar
Head quarters Insp.

SUBJECT.....

Diary No. of letter replied to.....

General and Revenue Secretariat

the

192

Proceedings of the Government of
His Highness the Maharaja of Mysore.

Read -

Date of issue.....

Signed by.....

May this be

- i Printed?
- ii treated as a standing order ?
- iii published in the Gazette,
English Part ?
- iv translated ?
- v placed at the disposal of the press ?
- vi published in the Gazette,
Kannadú Part ?

Letter no. 21/921 dated 14th
June 1930 from the District
Magistrate, Shimoga, soliciting
sanction of Government to
file an appeal against the
order of acquittal passed on
23rd Decr 1929 in C.C. 179 of 28-29
Order Thereon No. on the file of the
First Class Magistrate Shimoga.

Order:

Sanctioned. Under sec
417 of the Code of Criminal
Procedure, the Govt. Advocate
is requested to take steps
in time to file the
appeal in the High Court
of

Per 21/6

Mysore.

P.M.

Secy to Govt
Law Dept

ku

10/8
20/10.

- 1) The Govt Advocate, with the
Copy of the Judgment sent by
the D.M. Shimoga.
- 2) The District Magistrate, Shimoga
~~at once~~
- with a request to send to the
Govt. Advocate, a certified copy
of the Judgment as also copies
of the evidence in the case.

List of enclosure.

Copied by

Examined by

Extra

11

PROCEEDINGS OF THE GOVERNMENT OF HIS HIGHNESS
THE MAHARAJA OF MYSORE.

R e a d :-

Letter No. J 1/921 dated 14th June 1930 from the District Magistrate, Shimoga, soliciting sanction of Government to file an appeal against the order of acquittal passed on 23rd December 1929 in S.C. 179 of 28-29 on the file of the First Class Magistrate, Shimoga.

O R D E R No.E. 7327-8 / 1930 165-42

Dated Bangalore the 21st June 1930.

Sanctioned. Under Section 417 of the Code of Criminal Procedure; the Government Advocate is requested to take steps in time to file the appeal in the High Court of Mysore.

Ar. S. Subramanyam
For Secretary to Government
Law Department.
one

To

The Government Advocate, with the copy of the judgment sent by the District Magistrate, Shimoga.

The District Magistrate, Shimoga with a request to send at once to the Government Advocate, a certified copy of the judgment as also copies of the evidence in the case.

c.n.

IMMEDIATE.

Office of the Deputy Commissioner,

NO. J1-921/29-30. Encl

Shimoga District,

Dated, Shimoga, the 21st June 1930.

From

E. Rudrappa Esquire, M.A., (Oxon) Bar-at-Law.,
Offg Deputy Commissioner,
Shimoga District.

To

P. Mahadevaiya Esquire, B.A., B.L.,
Secretary to Government Law Department,
BANGALORE.

Sir,

With reference to your Telegram calling for a certified copy
of the judgment in or case No 179 of 28-29 on the file of the first

Law Sec Bangalore Certified copy Shimoga
First Magistrates Judgment case 179 of
28-29 already sent with No J 1 599 dated
4th March 1930 vide also your number
J. 495 / Police. Another certified copy will
be sent to days post

magistrates court Shimoga

I have the honour to
confirm the marginally
noted Telegram sent to

you just now and to state that a certified copy of the judgment has
already been sent to you with this office letter No J1-599 of 28-29
dated the 4th March 1930. Another certified copy of the Judgement
is herewith sent as desired.

I have the honour to be,
Sir,
Your most obedient servant,

G. R. N.
For District Magistrate.

~~XXXXXXXXXXXX~~ absent from the sta-
Shimoga District. tion.

G.R.N

Intro.

The Govt Advocate has also received
a certified copy of the judgment & has
filed the same in the High Court.
This may therefore be filed.

Don't

28/6/30

*Ym
R. 24/6*

IN THE COURT OF THE FIRST MAGISTRATE, SHIMOGA.

Present* K.C. Lingaiah Gowder, Esq., M.A., L.L.B.,

Special I Class Magistrate, Shimoga.

Dated the 23rd December 1929.

Criminal Case NO: 179 of 1928-1929.

COMPLAINANT

VS.

ACCUSED.

Government

Syed Hayath.

J U D G M E N T.

The chargesheet by the Police of Shimoga Taluk against the accused is this: The accused, Syed Hayath, who was the driver of bus NO: 2358, owned by Davengere Chennappa, drove it on 14.4.1929 on Honnali-Shimoga road rashly and negligently despite the fact that the steering rod connection of the bus was not in order and the result was the bus struck the avenue tree at the 4th mile from Shimoga ^{Town} ~~town~~ causing small injuries to several persons and the cleaner by name Kassim, who received serious injuries, finally succumbed to those injuries.

The charge sheet was placed before this court on 26.4.1929 and 11 witnesses were examined on behalf of the prosecution. On the 7th day of August 1929, the court framed charges against ~~at~~ the accused under sections 304 A and 337 I.P.C.

The accused's counsel Mr. T.G. Narayana Iyengar applied on 9.8.1929 for a de novo examination of P.Ws. 1,3,4,7,8,9,10 and 11 and the application was granted. P.Ws. Appanna Iyengar, Krishnarajay, Laddiah, Gangadhara Rao, Cross and Heldt were examined afresh and the rest were dispensed with. Out of five defence witnesses that were cited, only three were examined.

That the bus NO: 2358 owned by one Chennappa of Davengere was driven by the accused Syed Hayath on 14.4.1929 from Harihar to Shimoga, that it struck an avenue tree on the right side of the road at about 4 miles from Shimoga town and that the several passengers of the ^{bus} ~~bus~~ received small injuries and
that

that the cleaner died subsequently of the injuries received at the time are admitted facts; It is also disclosed in the ~~extant~~ evidence that the bus was running at a speed of 12 to 15 miles, that it had covered a distance of about 40 miles before the fatal occurrence and when it was coming down a slope in the road, it took a sudden turn towards the right and crashed against the tree.

The mysterious point in the case is the death of the cleaner boy. The several passengers who were seated in the bus at the time have been examined as the witnesses and their evidence points out that the cleaner was seated on the extreme right in the second row. Then the question would arise, how is it that out of all persons, he happened to receive such ^{serious} ~~several~~ injuries as ^{brought about} ~~caused~~ his death? Those who were sitting in the front row as well as in the back rows have received small injuries and not one of them has received serious injuries. The evidence of the witnesses to the effect that he was seated on the extreme right side of the second row and the fact that all the fellow passengers received only minor injuries as a result of the bus dashing against the tree might lead to a surmise that the bus must have been running at a rash speed, that the cleaner boy must have been overthrown from the bus and was caught between the front mudguard and the tree. This likely surmise has been fortunately rebutted by the dying declaration marked as Ext.P1 of the ~~cleaner~~ boy himself. According to this exhibit, he was seated on the front mud-guard of the bus and when the bus struck the tree his leg was caught between the bus and the tree and he thereby sustained serious injuries. It is unnecessary to say that this version is the probable and correct one.

In the whole evidence that is recorded, there is nothing to suggest that the bus was driven rashly or recklessly. In fact it is beyond doubt that the bus which left Harihar at about 8 AM. reached the place of occurrence at about 12 A.M. and having regard to the distance of about 50 miles that was covered and making allowance for the halt at Sowlanga, it cannot be suggested that the ~~max~~ speed had exceeded 15 miles per hour. A

A speed of 15 miles per hour is a legitimate speed. In the Police charge sheet, it is attempted to indicate that the bus in question had not the effective steering rod connection. Considering the distance of 50 miles which the bus had travelled prior to the time of the accident, it is difficult to say that the fact of an in-effective steering rod connection was known to the driver at the time of starting or for that matter the steering rod connection was all ~~along~~ along in-effective.

The court has charged the accused under section 304 A as well as section 337 I. P. C. with negligence in not applying the brake of the bus at the time of the occurrence. Section 304 A applies to the death of the cleaner ^{and} under section 337 applies to the injuries caused to the other passengers.

One really material and useful point in ~~determining~~ determining the alleged negligence of the driver in not applying the brake is the distance between the point at which the bus turned to the right and the tree. It may be unhesitatingly said that the evidence adduced on the point is not only divergent but also puzzling. The Police Inspector of Shimoga Taluk who hurried to the spot soon after the accident, did not take to his head to measure the distance when he held the mahazar. The next day he appears to have measured it with a rope but that rope has not been produced in the case and more over there is no reference to it in the mahazar. He seems to have calculated the distance at 45 feet and it is not known whether it included the length of the bus namely 18 feet. Some witnesses have guessed the distance to be ^{between} ~~between~~ 25 and 35 feet. The defence witnesses have put it between 3 and 4 yards. So on the whole there is not the accurate distance given and it is no doubt a material point to infer the negligence of the accused. P.W.1 Appannalyengar and P.W.4 Gangadhar Rao who were sitting to the left of the driver in the front row have deposed that the accused applied the brake. P.W.4 in a lay-man's fashion has stated that the accused tried to do something to stop the bus but it was impossible for him to do so.

He has further stated that the accused gave them a caution to be on guard as the steering rod connection was not working

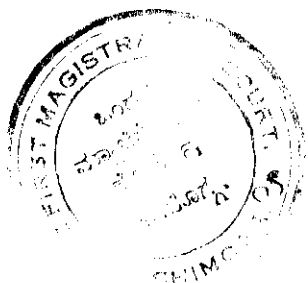
The defence witnesses 1 to 3 have also deposed that they came upon the scene soon after, examined the bus and found that the hand brake had been applied. The expert witnesses who were examined by the prosecution have also admitted that ~~that~~ the hand brake had been applied. The question then is whether under the circumstances, the accused committed negligence by not applying the brakes. Taking all the circumstances of the case into consideration that is the long distance which the bus had run, the ~~high~~ high speed and the gentle slope on which it suddenly turned to the right and the best endeavour of the accused who cautioned the passengers against the probable danger and applied the hand brake in order to stop the bus, it is difficult to believe that the accused neglected to apply the brakes. It appears as though ~~the~~ the steering rod connection which must have been pretty old went out of all control in a sudden and unexpected manner and in the face of the high speed and the slope, the driver found it hard to stop the bus in spite of his attempt to stop it with the result the bus struck the tree and the passengers received minor injuries. The cleaner must have been on the front mudguard and when the bus struck the tree, his leg must have been caught between the tree and the mudguard and injured and finally he must have died out of shock as testified to by the doctor. In the result therefore, the accused is acquitted under section 258 Criminal Procedure Code. The articles produced in the case may be returned to the accused.

pronounced in open Court.

Sd/ K. C. Lingaiya Gowder,

Special I Class Magistrate,

Shimoga.



" C C P Y "
Sd/ *Handwritten signature*
Special I Class Magistrate, Shimoga.

Shimoga.

Dismag

Shimoga

Send immediately certified copy
Shimoga First Magistrate,
Judgment Case 179 of 1928-29
for preferring appeal 23rd
instant.

Lawsec.

P. M.
21/6

bind
in
24/6/20.

Government of H.H. the Maharaja of Mysore.

General and Revenue Secretariat,

Dated, Bangalore 19 July 1930.

P 466-75
Law 16.29-5
Circular.

Government regret to observe that proposals for preferring appeals against orders of acquittal in Criminal cases are often submitted to Government by the District Magistrates on the eve of expiry of the period of limitation without previous consultation with the Government Advocate and without even the records ^{necessary for reference} such as depositions of witnesses, *documents* exhibits and statements of the accused, ~~necessary for reference~~. The attention of the District Magistrates is invited to rules ~~to rules~~ 69 and 72 of the Rules for the conduct of Legal Affairs of Government with the direction that the requirements of these rules should be invariably complied with in making such references in future.

By order,

fair draft
MP
17
For For Legal Remembrancer &
Secretary to Govt.,
Law Department.

To

The District Magistrates of Districts.

The Government Advocate.

The Inspector General of Police.